Leo Strauss

Brief an Helmut Kuhn

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Dear Mr. Kuhn:
Forgive me for writing to you in English but my hand writing is hard to read and the lady who is taking down my dictation does not have an easy command of German.

You have obliged me very much by sending me your review article on my book. I had heard of the existence of that article and had tried to get hold of it through my German publisher and a Heidelberg book store but my efforts have been of no avail. As regards the content of the review, I have been very much gratified by it. It is the best review of my book which has appeared. It is far more than generous and above all based on profound understanding of the issue with which I am concerned. I myself regard the book as a preparation to an adequate philosophic discussion rather than as a treatise settling the question (cf. the end of the Introduction and of Chapter 1). Such a preparation is necessary because the very notion of natural right has become completely obscured in the course of the last century. Scholars lacking historical knowledge simply believe the histories of natural right and as far as I can see no historian after Fr. J. Stahl has approached the subject philosophically. (Stahl's history of the philosophy of law ought to be reprinted. I tried to persuade my German publisher to do such a reprinting but I failed. Perhaps you have an opportunity to talk to another publisher on this subject). Since natural right is today at best a remembered rather than a living doctrine and since the fundamental ambiguity regarding natural right is the one caused by the essential difference between pre-modern and modern natural right, I had to write a *précis raisonné* of the history of natural right. I agree then with your judgement that the

value of my book consists rather in its historical than in its philosophic aspect especially since your judgement implies that the historical observations which I made are not philosophically irrelevant.

At this point, however, a serious disagreement between us begins. You say that historicism ought to have been treated by me in the style of the classic disputation, i.e., as a timeless possibility of error which only accidentally emerged in our age. You admit that to some extent I did this in the first two chapters, but you say that the bulk of the book is devoted to the causal genesis of the error rather than to its frontal criticism. But »it is necessary to state not only the truth but also the cause of the error« (*E.N.* 1154a22–26) and the cause of the error may well lie in accidents (»historical« accidents – cf. *Politics* 1341a28–32). In other words, not all errors have the same status: there are primary and, as it were, natural errors but there are also derivative and »founded« (fundierte) errors. I have indicated this in my chapter on Hobbes. One may say that the idea of philosophy implies directly the possibilities of dogmatism on the one hand and of skepticism on the other. The Cartesian-Hobbesian notion of a dogmaticism based on skepticism is derivative from the co-existence of dogmaticism and skepticism. »Dogmaticism based on skepticism« is not a preserve of Descartes and Hobbes (Locke, Hume, Positivism); we must also not forget Kant's thing-in-itself surrounding, as it were, the dogmatic science of the phenomenal wor[l]d nor Hegel's understanding of philosophy as »sich vollbringenden Skepticismus.« To return to historicism, it appears to me to be an attempt to correct »dogmaticism based on skepticism« with its peculiar »abstractions« or remoteness from the primary issues (which are met properly only on the level at which both dogmaticism and skepticism live), and hence to be derivative in the second degree. The genetic account seems therefore to be particularly appropriate.

If I understand you correctly, you suspect that while my method as distinguished from my concern is historical, my method endangers my concern and that in opposing historicism I get entangled in a negative historicism of my own. I do not think that you are right. In regarding Socrates, Plato and Aristotle as the classics of natural right I do not assert, like a historicist, that there is of necessity and essentially an absolute moment in history. I merely say that it so happened that the clearest exposition of the issue was given by that practically contemporary triad – it could have happened elsewhere or at other times, perhaps it did and we merely do not happen to know it. Or if the triad had not achieved

what it did achieve the same discovery might have been achieved by men who now are known only as pupils or successors of the triad. »History« is not in my opinion, as you say it is, essentially »history of decay« but if classical natural right is superior to modern natural right (as you seem to admit), then a decay did take place in fact. At the end of your article you refer to Aristotle's »negative-periodistic concept of time« which, you say, is incompatible with my own »productive-historical interest.« You say that Aristotle's concept of time demands »a kosmos without history.« I would say that Aristotle's concept of time demands an eternal or sempiternal order as the ground of all change and in a way manifesting itself in all change. Aristotle excludes indeed the essential necessity of the reasonable character of all change of human thoughts and institutions; such change is necessary but there is no necessity of its being reasonable or »meaningful.« Investigations of human thoughts and institutions, and of their sequence, i.e., historical studies, have for Aristotle, too, a certain value as he has shown abundantly »by deed«, but of course always a strictly subordinate one, since what ultimately alone matters is the transhistorical »Wesen der Dinge.«

You say that I accept the Aristotelian concept of time according to which time is rather the cause of decay and that I apply this concept to Aristotle's own philosophy: Aristotle's own philosophy is for me the permanent which has been whittled down by historical change. I am not an Aristotelian since I am not satisfied that the visible universe is eternal, to say nothing of other perhaps more important reasons. I can only say that what Aristotle and Plato say about man and the affairs of men makes infinitely more sense to me than what the moderns have said or say. In passing I note that your rendering of Aristotle's understanding of time is decisively incomplete. Strictly speaking time is not the cause of decay rather than of the opposite (*Physics* 222b25–26); time can be said to be with equal justice to be the discoverer or a good helper of knowledge (*E.N.* 1098a22–26).

I turn now to our disagreement regarding the history of natural right. You say »as is well known, the terminology of the doctrine of natural right was created only by stoicism«: Plato does not speak at all of natural right and Aristotle only parenthetically (295). I begin my discussion with the remark that I spoke in the very title of my book of natural right and not of natural law. Natural right (*jus* or *justum naturale*, *physikon dikaion* or *to physei dikaion*), is, I contend, an important and even central theme of both Plato and Aristotle. As for Plato, I refer

to the *Republic* 501b2 (and context). This passage must be read in conjunction with such passages as *Republic* 484c8–d3 and 597b–d. It thus becomes clear that for Plato »natural right« strictly understood, that which is right by itself and not in particular through man's making it right, is the same as »the idea of justice.« Besides, the whole order of the best polity is emphatically »according to nature,« whereas the »present« arrangements are apparently »against nature« (456c1–2). The very justice of the polity of the *Republic* depends upon its being »according to nature.« The legislator in the *Laws* follows »the natural order« of the various good things (631d1–2). The domination of prudence or law is »according to nature« (690c1–3). Cf. also *Laws* 765e for a clear statement of the relation between »nature« and »end.« The whole Platonic doctrine of the order of the soul and of the order of the virtues is the doctrine of natural right if it is true that »justice« does not necessarily mean one of the many virtues but the all comprehensive virtue. Cf. furthermore *Laws* 757c3–d5, regarding the relation of distributive justice to »nature.« To summarize, Plato's best polity is the order of human things dictated by natural right.

But the core of our disagreement is the interpretation of Aristotle's doctrine of natural right. I try to follow your criticism point by point. You say that I render Thomas' interpretation in an imprecise and even misleading way. I would be grateful to you if you substantiated this charge. I say that Thomas disagrees at any rate with the wording of Aristotle since Aristotle says that »with us everything is changeable« and hence in particular right, without making a distinction between the changeable natural right and the unchangeable natural right, whereas Thomas makes a distinction: the reasons of changeable things, and hence in particular of natural right, are unchangeable; »the first principles of natural law« are unchangeable, whereas already »the conclusions near to the first principles« are changeable. (Cf. The Commentary on the Ethics, N. 1029 and S. th. 1–2 2.94 a.5.c.) The Thomistic example adduced here by you – theft is always unjust – is not sufficient according to Thomas himself; S. th. 2 2q. 66 a.5., shows that if a man is in very great need he may take away stealthily from others what is indispensable to him in this situation. With a view to this fact and similar ones of the same character, I agree somehow with your statement that my interpretation of the Aristotelian passage differs from the Thomistic interpretation only by a nuance. I do not believe, however, that this renders invalid, as you say it does, my criticism of the Thomistic inter-

pretation; there are sometimes subtle nuances which are of crucial importance. I insisted on the fact that Thomas' doctrine of natural law differs radically from any Aristotelian equivalent because there is no *synderesis*, no habitus of practical principles, in Aristotle. And, considering the connection between *synderesis* and conscience this means that Aristotle implicitly denies the conscience. You are mistaken if you think that a single passage in the *De Veritate* has induced me to make this point. What guided me was a broad reflection on the status of moral principles in Aristotle's teaching as a whole compared with the status of moral principles in Thomas' teaching as a whole.

Yet I return for the time being to your discussion of the crucial Aristotelian passage. You admit that E.N. 1134b22 by itself clearly states that both natural and conventional right are »equally or similarly changeable.« But you say that this statement is wholly incomprehensible and that a very minor and perfectly plausible emendation suggested by Joachim disposes of the difficulty: the unintelligible sentence is to be read as a question. I did not know Joachim's emendation but I knew that Moerbeke read the text as you suggest that it should be read, and that Thomas understood the sentence in question as a *dubitatio*. But I contend that this by itself does not dispose of the difficulty in any way. For what does your solution amount to? Natural right has the same unchangeability and the same changeability as, say, the human hand: »by nature the right hand is stronger yet all men can become ambidextrous.« Does this mean that by nature theft is unjust, but in extreme situations theft may become just? Or, generally stated, that there are rules of natural right which under certain conditions can be justly modified? This would mean that there is not a single rule of natural right which is unchangeable and universally valid. At any rate, Aristotle's example of the natural right-handedness of man does not justify the Thomistic distinction between immutable principles of natural right and mutable conclusions.

In the immediate sequel Aristotle speaks of the specific changeability of *conventional* right; he shows that this changeability is a function of the changeability or variety of polities; and yet, »there is only one polity which is everywhere in accordance with nature the best.« You take for granted that the unchangeability of the best polity proves the unchangeability of natural right.[1] Aristotle certainly does not say that the polity

[1] It is significant, I think, that Aristotle speaks of the best polity in the discussion of conventional right rather than of natural right.

which is everywhere in accordance with nature is everywhere and always *just*; he says that it is everywhere and always the *best*. For, as he makes clear in his *Politics*, the one best polity is not possible everywhere and therefore it cannot be just everywhere: while kingship is the best and the most divine polity it would be most unjust to establish it among a populace which does not possess a natural fitness for it. (*E. N.* 1160a35 ff, *Politics* 1289b40 and 1296b24 ff.)

You detract from the significance of the passage under consideration by stating that the division of right into natural and conventional right concerns only political right as distinguished from »right simply.« You have in mind, I take it, *E. N.* 1134a24–26. But I do not see how »right simply« can mean anything else except »political right.« (This is incidentally also the opinion of Thomas – Commentary on E. N. n. 1003.) »Supremely right« is used in the *Politics* in contradistinction to the two typical errors regarding right, namely, democratic right and oligarchic right (cf. 1280a22 and context). »Political right« is »right simply« because the relation of right between different men requires a mutual independence of the men who stand in a relation of right; to the extent to which a human being »belongs« to another human being he lacks that independence. Furthermore, political right is right simply because it is directed not merely to subordinate goods like the exchange of goods and services but towards the common pursuit of autarchy, i. e., of virtue: it is the fullest form of right (cf. *Politics* 1280b1–12 and 1337a22–27). The relation of right between a citizen and a stranger is of necessity less full or rich. By this I do not mean that it is beyond the distinction between right and wrong but it is inferior, qua relation of right, to that among fellow citizens (cf. *Apology* of Socrates 30a3–4; also Cicero, *Offices*, I 57, 50–51 and 53). While Aristotle makes the distinction between the natural and the conventional only in the case of »political right«, i. e., of the right obtaining among male full fellow citizens he does not deny that there is natural right in regard to foreigners and in particular to foreign cities. After all, he himself does not speak of conventional right but of legal right, and different cities are not subject to the same laws strictly speaking: a city must be »autonomous.« That he admits natural right as regards foreigners, appears most clearly from his teaching on slavery: it is unjust, i. e., unjust by nature, to enslave men who are not by nature meant for slavery. You admit this of course. But from this it follows that if even the highest and fullest natural right is changeable, the less dense form of natural right (that obtaining between different individual cities,

e.g.) is also changeable. Besides, in considering natural right and its changeability I consider not merely the relation to foreign enemies but the relation to domestic enemies as well; and not only the relation to enemies … I emphasize the relation to foreign enemies only because this is the most obvious and common case in which noble statesmen are not blamed for actions which under normal conditions would be unjust.

You seem to think that for Aristotle natural right resides chiefly in equity, in the fair interpretation of the written law of the particular political community. I am not so sure of this although I know that I have the authority of Thomas against me. However this may be, there can be no doubt that Aristotle developed the principles of natural right in his teaching regarding commutative and distributive justice, which so far from being dependent on legislative enactment, are the criteria of good legislation. Notions like the just price, fair wages and the condemnation of usury, are the most common examples. One could say that the part of commutative justice which deals with the exchange of goods is in itself sub-political (cf. *Politics* 1280b1–12 with the existence of this kind of right in the city of pigs of the *Republic*). But at any rate the great theme of natural political justice is the other part of commutative justice, punitive justice (hence the distinction between guilty and innocent transgressions as well as the concern for proper proportion between the various kinds of crime and the various kinds of punishment, etc.), and, above all distributive justice, the principles of which are the fundamental rules regarding the assignment of public honor and authority to those worthy of it.

You contend that natural right proper in the full sense is characterized by the assumption that there is a universal society comprising all men which is held together by a universal, rational law binding man as man, and that this notion was fully developed first by the Stoics. I am familiar with this view and I have given it some thought, just as I have considered the passages of the *Rhetoric* and the *Ethics* to which you refer in this context (pages 300–301). As for the passage in Plato to which you refer, it occurs not in the *Gorgias* but in the *Protagoras*, and it is ascribed not to Prodicus but to Hippias, the great fool. In addition, Hippias does not say that all *men* are by nature friends and fellow citizens but those engaged in the conversation and their likes, i.e., the *wise*. However this may be Plato did not believe in the possibility of a universal society as an actual society as appears from the myth of the *Statesman* and the noble lie in the *Republic* (414d–e: the substitution of

»country« for »earth«). Plato tacitly rejected the universal society as a solution of the *political* problem. But can one say that the Stoics regarded the universal society as a *political* society? The difference here concerns really the status of divine providence and hence the question whether the universally valid »precepts« can be understood as laws proper. Whether the Stoics differed in this respect from Plato, cannot be decided on the basis of Cicero's *Laws* I and *Republic* III because it is necessary to distinguish between the strict and the popular teaching of the Stoa. At any rate, as you admit, Plato and Aristotle granted that there are obligations of every human being to every human being as such. They did not think however that those minimum obligations can be the root of all obligations: the end cannot be deduced from the beginning.

You seem to argue as follows: since Aristotle recognized the justice of slavery, e.g., he is very far indeed from the spirit of natural right thinking. I reply that Aristotle's admission of the justice of slavery – of a certain kind of slavery – proves that he was a natural right teacher, for according to him it is by nature right to enslave and to treat as slaves a certain kind of man. You do not hesitate to regard Cicero and Thomas as natural right teachers and they too did not reject slavery as simply unjust. It is equally a matter of course that no philosopher ever regarded the social distinctions (kings, nobles, free men, slaves, exiles, strangers) as ultimately important; the social hierarchy is respectable only to the extent to which it is in tolerable harmony with the natural hierarchy. Whether there is or is not such a natural hierarchy, is controversial between egalitarian and non-egalitarian natural right. This issue is not even touched by remarks expressing a contempt for the merely social hierarchy. The natural hierarchy is clearly recognized through the distinction between the wise and the vulgar which plays such a great role in the Stoic teaching. The real question is whether the Stoics differed from Plato and Aristotle by asserting that every human being, including men of outstanding stupidity, can become wise. Hitherto I have not seen a clear proof that they made that assertion.

In conclusion I apologize for having bothered you with this long letter.

Sincerely yours,
Leo Strauss